

# BUTZEL LONG

ATTORNEYS AND COUNSELORS

*a professional corporation*

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**VIA EMAIL AND VIA FIRST-CLASS MAIL**

February 15, 2017

Tamara Ohl  
U.S. Environmental Protection Agency  
Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604-3590  
[ohl.tamara@epa.gov](mailto:ohl.tamara@epa.gov)

**Re: Self-Implementing Polychlorinated Biphenyls (PCB) Cleanup:  
Peerless Metal Powders & Abrasives  
124 S. Military Street  
Detroit, Michigan 48209**

Dear Ms. Ohl:

We are the attorneys for, and are writing this letter on behalf of, Peerless Metal Powders & Abrasives and PTDC Properties, LLC. (hereinafter together referred to as "Peerless"). I am writing as a follow-up to our February 7, 2017 conversation and my follow-up communication to you concerning the property located at 124 S. Military, Detroit, Michigan ("Site") and the recent discovery of PCBs at the Site in connection with the condemnation process to make way for the Gordie Howe International Bridge between Detroit and Windsor.

As discussed on the call, Peerless is not responsible for the PCBs at the Site. Peerless has never received, stored, disposed, released or handled PCBs or PCB containing equipment and did not cause the release of PCBs on the Site. Rather, Peerless believes, and Site history confirms, that PCBs found on the Site are the result of the scrap metal processing operations that took place on the property by a former owner and operator from approximately 1930 to 1965. In addition, as we further discussed, in as much as the PCBs at the Site were released and have been in place since prior to 1978, the Site is presumed not to present an unreasonable risk of injury to health or the environment from exposure to PCBs. 40 CFR 761.50(b)(3). Even if Peerless were responsible for the PCBs at the Site, it is our understanding that absent a determination

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Ms. Tamara Ohl

that "an unreasonable risk" exists, then removal is not required under TSCA. No such finding is warranted. The Site, located in an industrial area, currently consists of a small office building fronting Military Street with fenced-in parking behind (to the west). The area in question is partially under concrete and used for parking. There is no indication of migration of PCBs off-site. Moreover, any PCBs at this Site have been in place for over fifty (50) years.

During our call, you requested that I send you the history of the Site as Peerless understands it. My prior communication provided you with a brief history. We have also attached as Exhibit 1, an affidavit from Paul Tousley, the President of Peerless Metal, who has had personal knowledge of the Site since at least 1958. The affidavit provides some history and confirms that Peerless has never handled PCBs. Also attached as Exhibit 2 is an affidavit from Noreen Warrens, an employee of Peerless Metal, who has worked at the Site since January of 1976 and can attest that there have been no scrap metal operations at the Site since she began working there in 1976.

I trust the above responds to your questions. If you have additional questions, please feel free to contact me.

Respectfully,



BETH S. GOTTHELF

TP  
Enclosures

copy to: Susan Prout, Attorney, US EPA Region 5  
[prout.susan@epa.gov](mailto:prout.susan@epa.gov)  
Karen Williams, MDEQ  
[WILLIAMSK5@michigan.gov](mailto:WILLIAMSK5@michigan.gov)

BUTZEL LONG

**AFFIDAVIT OF PAUL TOUSLEY**

STATE OF MICHIGAN )

) ss.

COUNTY OF OAKLAND )

Paul Tousley, being first duly sworn, states as follows:

1. I make this Affidavit from my own personal knowledge and can testify competently as to the facts set forth herein.
2. I am and have been the President of Peerless Metal Powders & Abrasives ("Peerless") since 1986.
3. I am also a part owner of PTDC Properties, LLC. PTDC Properties currently owns 136 S. Military (East Military Parcels) as well as 124 S. Military (West Military Parcels).

**Peerless Operations and the East Military Parcels**

4. Peerless operates a metal particles and powder manufacturing business on the east side of Military Street at 131 S. Military, Detroit, Michigan (East Military Parcels). Peerless has been at this location since approximately 1970. Peerless also has offices on the west side of Military at 124 S. Military (part of the West Military Parcels). Peerless leases these properties from PTDC Properties, LLC. The East Military Parcels are immediately across the street from the West Military Parcels.
5. Prior to becoming President of Peerless, starting in approximately 1958, I was a sales representative for a company that sold new peening steel shots. In connection with this position, I had occasion to visit and became familiar with Metal Ores & Fines, which operated a used peening steel shot processing business on the East Military Parcels where the current Peerless operations are now located. Metal Ores & Fines was owned by Albert Newman. After a few years, I began performing sales representation for other companies, including Metal Ores & Fines. During this time, my visits to the Metal Ores & Fines facility increased, giving me additional opportunity to observe the activities on the West Military Parcels.

### The West Military Parcels

6. Neither Peerless nor Metal Ores & Fines ever conducted manufacturing and/or processing operations on the West Military Parcels.
7. From approximately 1930 to 1965, Iron & Metal Products, operated a small scrap metal yard on the West Military Parcels. Iron & Metals conducted torching and cutting operations as part of its scrap metal operations. Iron & Metal Products was started by Ruben Newman, Albert Newman's father. At all times that I am aware of, Iron Metal & Products was owned and operated by Ruben Newman or the Newman family.
8. Iron & Metal Products ceased its scrap metal operations on the West Military Parcels sometime around 1965. No operations or processing was thereafter conducted on the West Military Parcels, which remained vacant except for a small office building and parking lot and occasional storage of surplus equipment or equipment to be used across the street at Peerless.
9. In approximately 1975, Peerless began leasing office space on a portion of the West Military Parcels from the Newman family and/or the Newman Trust. No manufacturing operations were conducted by Peerless at this location. At no time did Peerless receive, use, dispose or in any way possess PCBs or anything containing PCBs at, on or about the West Military Parcels.
10. In 2011, PTDC Properties, LLC purchased portions of the West Military Parcels that the office building and parking lot were located on from the Newman Trust.
11. In connection with its purchase of the properties, PTDC performed Phase I/II Environmental Site Assessments which detected PCBs on some areas of the West Parcels. Newman was required as part of the transaction, to perform remediation of the PCBs. Peerless, on behalf of Newman, hired a consultant who subsequently performed a voluntary clean-up of PCBs at the site, which was approved by the U.S. Environmental Protection Agency in 2013. The cost of the remediation was borne by Newman.
12. Neither Peerless nor PTDC ever received, used, disposed or otherwise possessed PCBs or PCB containing articles or equipment on, at or about either the East Parcels or the West Parcels.
13. Neither Peerless nor PTDC were aware of any PCB contamination not addressed by the 2013 Newman clean-up until it received a copy of a preliminary site assessment performed by PM Environmental in January of 2017 as part of MDOT's plan to condemn the property in connection with the Gordie Howe Bridge project.

14. Based on what I observed at the West Parcels, no operations were conducted on the West Parcels after 1963 which could have involved or resulted in the release of PCBs.

Paul W. Tousley

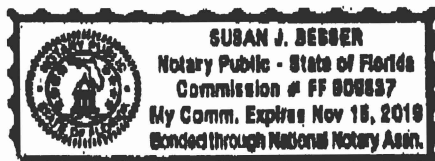
Paul Tousley

The signatory is known to me and  
acknowledged the foregoing instrument  
this 13<sup>th</sup> day of February, 2017.

Susan J. Besser  
Susan J. Besser, Notary Public

Collier County, FL

My Commission Expires: 11-15-19



AFFIDAVIT OF NOREEN WARRENS

STATE OF MICHIGAN )

) ss.

COUNTY OF OAKLAND )

Noreen Warrens, being first duly sworn, states as follows:

1. I make this Affidavit from my own personal knowledge and can testify competently as to the facts set forth herein.
2. I am currently employed by Peerless Metal Powders & Abrasives and have worked for Peerless as a full time office worker at 124 S. Military Street, Detroit, Michigan since January of 1976.
3. When I started to work in January 1976, there was only a small office building on site. The rest of the property was vacant. No operations were conducted by Peerless on this (west) side of Military as manufacturing operations were conducted at the facility located on the east side of Military Street, at 131 S. Military.
4. At that time, my office window faced the back of the building and looked out onto the vacant area.
5. At no time from 1976 to the present have I observed any scrap metal operations or similar operations at 124 S. Military or adjacent properties nor did I observe any scrap metal being received or shipped to the former scrap yard at 124 S. Military.



Noreen Warrens

The signatory is known to me and  
acknowledged the foregoing instrument  
this 13<sup>th</sup> day of February, 2017.



Barbara D McSwain, Notary Public

Wayne County, MI

My Commission Expires: 5/16/2017

